

The Honorable MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

A.B., by and through her next friend
CASSIE CORDELL TRUEBLOOD, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al.,

Defendants.

NO. 2:14-cv-1178 MJP

THE DEPARTMENT'S RESPONSE
TO PLAINTIFF'S MOTION FOR
MATERIAL BREACH OF
CONTEMPT SETTLEMENT
AGREEMENT AND MOTION FOR
CIVIL CONTEMPT

I. INTRODUCTION

In 2018 the State, the Plaintiffs, and the Court charted a multi-phased course that would govern the State's efforts to reach compliance with an underlying permanent injunction, over many years. The fundamental bargain of this Contempt Settlement Agreement (Agreement) is that the State would focus its efforts "upstream" of class members, while forgoing the expansion and use of certain facilities like Yakima and Maple Lane. This path to compliance would be longer, and as such, would certainly leave the State in contempt for a longer period of time. Accordingly, the Agreement suspended contempt fines for inpatient services, and created an opportunity for the State to instead spend that money implementing diversion services and class member supports.

1 The State is accomplishing what it promised through investment of hundreds of millions
 2 of dollars, partnering with various stakeholders, and relentless efforts to implement the
 3 requirements of the Agreement. Remarkably, and despite a global pandemic and its resulting
 4 challenges, the State honored every one of these commitments during the first phase of the
 5 agreement. Additional substantial investments continue to come online during Phase Two,
 6 proceeding largely “on track.” The recently planned Phase Three ambitiously plans to both
 7 improve the programs already implemented and expand programs to new geographic regions.

8 Plaintiffs’ motion conflates unfinished work with a breach of the commitments
 9 made through the Agreement. The motion focuses on a novel problem – a recent flood of
 10 civil conversion patients being court ordered into the Department’s custody, and taking up room
 11 that would otherwise serve forensic restoration patients, thus hindering the current efforts to
 12 reduce wait times for restoration and inpatient evaluation. But Plaintiffs fail to give full credit to
 13 the State’s efforts to respond to this particular problem, fail to identify any reasonable solutions
 14 that the State is refusing to pursue, and fail to appreciate the likelihood that massive investments
 15 made by the State, both within the scope of this litigation and beyond it, will one day bear fruit.

16 The Plaintiffs, like the State, are understandably frustrated with delays and increased
 17 wait times for competency restoration treatment. The State believes the current path, continuing
 18 to honor its obligations under the Agreement, while also transforming behavioral healthcare
 19 access and availability state-wide, is the best path forward. Plaintiffs offer no better path forward,
 20 and instead boldly request disproportionate additional fines and entanglements, without any
 21 recognition of the State’s work thus far. Plaintiffs’ motion should be denied accordingly.

22 II. FACTS

23 A. The State Has Implemented All of the Numerous Programs Required by the 24 Contempt Settlement Agreement, of Which the Western State Hospital (WSH) Bed Construction Was Only a Small Part

25 The Settlement Agreement contains five “Substantive Elements,” containing
 26 commitments towards improvements in Competency Evaluation, Competency Restoration,

1 Crisis Triage and Diversion, Education and Training, and Workforce Development,
 2 Dkt. No. 599-1, at 9– 36, all to be implemented in “phases.” *Id.* at 9, 37. These five elements are
 3 further divided into sub-parts. Dkt. No. 599-1, at 9– 36. The commitment to build additional
 4 forensic bed capacity, to which Plaintiffs refer, is one of five sub-parts under the second
 5 Substantive Element, dedicated to Competency Restoration. Dkt. No. 599-1, at 20. The other
 6 sub-parts of *this* element describe commitments to seek legislative change, to create an outpatient
 7 competency restoration option, to establish new in-court diversion positions called
 8 forensic navigators, and to close available competency restoration bed space at the Yakima and
 9 Maple Lane competency restoration facilities. Dkt. No. 599-1, at 10-21.

10 **1. The State successfully implemented Phase One during a global pandemic**

11 To further guide the establishment of these five substantive elements and all their
 12 sub-parts, the Settlement Agreement also directs the State to develop implementation plans,
 13 describing with more particularity how the State will fulfill the commitments made through the
 14 Settlement Agreement. Dkt. No. 599-1, at 45. The Final Implementation Plan for Phase One
 15 further divides the five primary “Substantive Elements” into fourteen distinct obligations, while
 16 also memorializing the Parties’ mutual recognition of two primary challenges related to
 17 implementation. Dkt. No. 679-1, at 3. First, the “markedly ambitious timelines” contained within
 18 the plan, and second, that many of the commitments made “require the development of programs
 19 and services that have never existed in the state of Washington.” *Id.* The commitment to build
 20 additional forensic beds is one of the Implementation Plan’s fourteen distinct obligations.

21 During the course of Phase One, and allowing for only a few extensions of time from the
 22 Court on account of the severity of the early stages of the COVID-19 pandemic, the State
 23 honored every one of its commitments under the five Substantive Elements, including the
 24 requirement to build additional bed capacity. Dkt. No. 830-1, at 6 (May 2021 Joint Report
 25 reporting completion of bed construction); Dkt. No. 924-1 (September 2022 Joint Report, noting
 26 completion of the final Phase One commitments). A close review of each and every sub-part of

1 the fourteen distinct obligations, as embodied in the Phase One Implementation Plan,
 2 demonstrates that the majority of all required tasks were completed timely, if not ahead of
 3 schedule, except where the Department received a grant of additional time from the Court to
 4 complete. Declaration of Titus Butcher (Butcher Decl.) at 2.

5 **2. Phase Two implementation is ongoing, and largely “on track”**

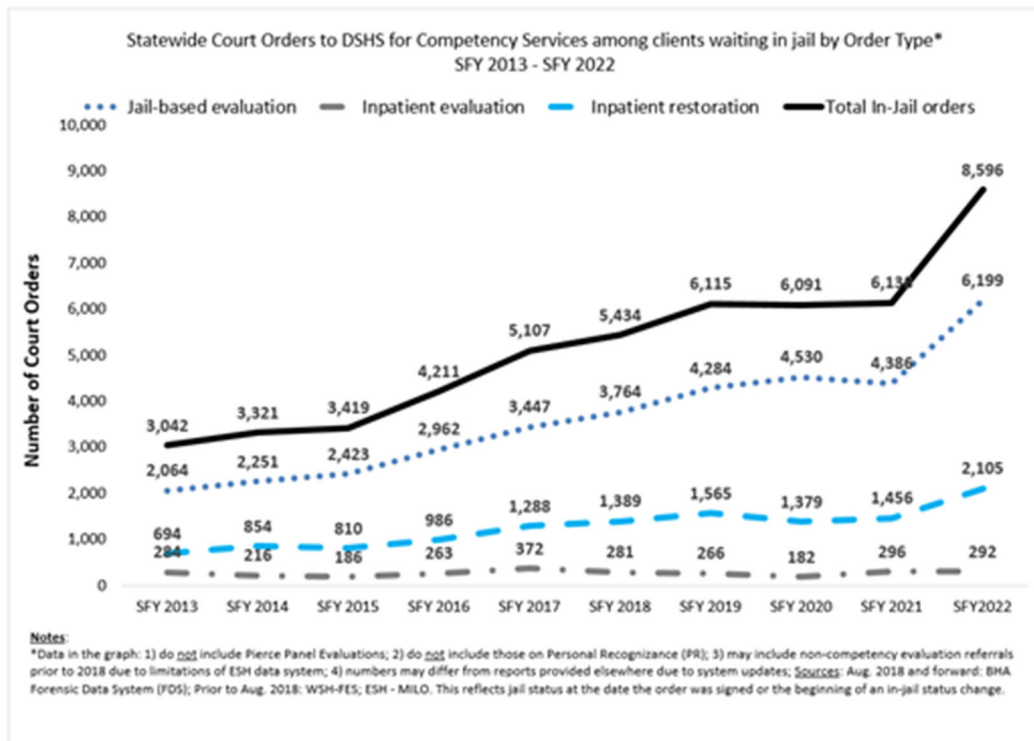
6 Phase Two of the Agreement, focuses on implementation of these initiatives in
 7 King County, and is ongoing. Dkt. No. 599-1, at 37. The Final Implementation Plan for
 8 Phase Two details fifteen service components to be implemented, and was created with the
 9 benefit of hindsight from “Lessons Learned” during Phase One. Dkt. No. 838-1. Of these fifteen
 10 components, only one project, related to identifying partners for the creation of two sixteen-bed
 11 crisis stabilization facilities, is delayed. All other projects are completed, or “on-track,” including
 12 outpatient competency restoration in King County, which began services on October 31, 2022
 13 after a delay in identifying a suitable provider. Butcher Decl. at 3. Phase Two continues through
 14 June 30, 2023. Dkt. No. 599-1, at 37.

15 **3. The Parties have jointly negotiated the Phase Three commitments for the**
 16 **period of 2023-2025**

17 At the time of the Agreement in 2018, the scope of Phase Three was indeterminate,
 18 though the Agreement provided a process by which the Parties would recommend reinvestment
 19 in the Phase One and Two regions, expansion to new regions, or both. Dkt. No. 599-1, at 37.
 20 That process has since occurred, with the Parties negotiating at great length to come to terms on
 21 a proposed scope for future implementation efforts. Butcher Decl. at 3. As proposed, Phase Three
 22 will increase investments in the many *Trueblood* initiatives already in place in the Phase One
 23 and Two regions, and also recommend geographic expansion to two more regions: the
 24 Salish Region (Kitsap, Jefferson, and Clallam Counties) and the Thurston-Mason Region, with
 25 these efforts set to begin July 1, 2023, and conclude on June 30, 2025. Butcher Decl. Ex. C.
 26

B. Competency Service Demand Continues To Increase at Alarming Rates.

Spiraling upward demand continues to be the primary factor behind long wait times.



As a Court-funded analysis concluded in 2018, these increases in court orders continue to outpace all other relevant factors, such as population growth, prevalence of mental illness and substance abuse, homelessness, and even arrests. Declaration of Dr. Thomas J. Kinlen (Kinlen Decl.) Exs. A-B. The State's own analysis reached the similar conclusions. Kinlen Decl. at 2. The State has continued to invest substantial resources in building beds, implementing diversion programs under the Agreement, and making massive investments in the larger behavioral health system—all detailed further below—but these investments have been outstripped by demand. Kinlen Decl. at 3.

C. The State Continues To Develop and Build New System-Wide Bed Capacity

In an effort to achieve compliance with the permanent injunction, the State has deployed hundreds of new beds for class members, as well as for other populations that are court-ordered

into State custody. By focusing on the forty-two beds at WSH, Plaintiffs' argument fails to acknowledge all of the other capacity the State has opened to provide treatment.

Project Name	Beds	Target Population	Projected Opening
<i>Past Openings</i>			
Yakima Competency Restoration Center RTF	24	Competency restoration	Opened 2016, closed at direction of Federal Court
Maple Lane Competency Restoration Center RTF	30	Competency restoration	Opened 2016
Civil to forensic ward renovation at WSH	30	Competency restoration and evaluation patients	Opened 2018
Fort Steilacoom Competency Restoration Center RTF	30	Competency restoration	Opened 2019
ESH major construction and renovation project	50	Competency restoration and evaluation patients, overflow from WSH	Opened summer 2020
Renovation of E3/E4 wards at WSH	40	Competency restoration and evaluation patients	Opened February 2021
<i>Future Openings</i>			
Emergent Community Hospital Contracts	50+	Felony conversion patients	1st Quarter, 2023
New construction of F9 and F10 wards at WSH	58	Competency restoration and evaluation patients	February for F9 and March/April for F10, 2023
Maple Lane Oak Cottage	16	Felony conversion patients	February, 2023
Maple Lane NGRI program	30	Not guilty by reason of insanity patients	Late 2023/early 2024
Three Clark County facilities	48	Felony conversion patients	Late 2024/early 2025
New forensic hospital	350	Competency restoration and evaluation, NGRI, and hard to place felony conversion patients	Construction commencing in 2023, completion estimated 2027-2029

Declaration of Kevin Bovenkamp (Bovenkamp Decl.) at 2. These bed projects are only those most closely linked to *Trueblood* class members, because they either created treatment space beds, or make more beds available by transferring other patient populations out of beds that can then serve class members. WSH has also converted other physical space at its civil center to increase bed capacity, including repurposing treatment spaces on C9 into ward space and increasing the census of small specialty wards into a full-census treatment wards on C1 and C4.

1 Bovenkamp Decl. at 7-8. These actions are creating an additional fifty to sixty beds of civil
2 capacity beyond the projects listed above. *Id.*

3 The State, through funding appropriated to the Department of Commerce, also continues
4 to develop numerous facilities that will improve the greater behavioral health system, and to
5 provide new facilities that can serve existing state hospital patients, and patients who could
6 otherwise be court-ordered to a state hospital. Since 2015, and parallel to the efforts previously
7 reported to the Court, the Department of Commerce has provided over \$193 million for the
8 construction of over 1600 behavioral health beds of various types. Kinlen Decl. at 4.

9 Certain facilities among these, like the intensive behavioral health facilities, are specially
10 designed for treating patients that would otherwise need state hospital level of care.
11 Declaration of Teesha Kirschbaum (Kirschbaum Decl.) at 3. Outside the scope of the specific
12 investments within Phase One and Two of the *Trueblood* Agreement, the State has invested over
13 \$1.7 billion into the larger community mental health system during just the 19-21 and 21-23
14 biennia. Kirschbaum Decl. at 3, Ex. A (showing a breakdown of this funding). In 2022, the
15 Legislature appropriated more than \$520 million in *additional* funding for Washington's housing
16 and homeless system, Dkt. No. 907-1, at 9-10. The State also provided funding for a seven
17 percent Medicaid provider rate increase that took effect in January 2023¹, and the 2022
18 supplemental budget also included over \$100 million in workforce funding designed to stabilize
19 the behavioral health workforce.² The Governor's current proposed budget for 2023-2025
20 includes a request for a bond-supported \$4 billion budget for housing and behavioral health
21 capital investments, and hundreds of millions of dollars in additional behavioral health funding,
22 including an additional seven percent Medicaid provider rate increase to address workforce
23 (\$208.2 million), crisis services investments (\$101.4 million), and more.³ Included in these

24 ¹<https://www.hca.wa.gov/about-hca/news/announcements/hca-increases-managed-care-behavioral-health-rates>

25 ²<https://www.hca.wa.gov/about-hca/news/news-release/hca-sends-provider-relief-workforce-stabilization-funds-behavioral-health-treatment-agencies>

26 ³<https://ofm.wa.gov/sites/default/files/public/budget/statebudget/highlights/budget23/202325PolicyBudgetHighlights.pdf>, at 45, 28-29.

1 investments are the development of 520 long term community civil beds. Kirschbaum Decl. at 3,
 2 Exs. B- C. These community long-term beds are designed to replace civil capacity that will close
 3 at the state hospitals. Kirschbaum Decl. at 3. Since 2018, the State has already contracted for
 4 almost 200 of these beds in facilities across Washington. *Id.* The Intensive Behavioral Health
 5 Facilities are opening right now, with fifteen beds having already opened and a total of 111 to
 6 be opened throughout 2023. *Id.* Further, state hospital patients are already being discharged to
 7 these facilities, and plans are underway to transition state hospital patients that have been
 8 previously difficult to place. *Id.*

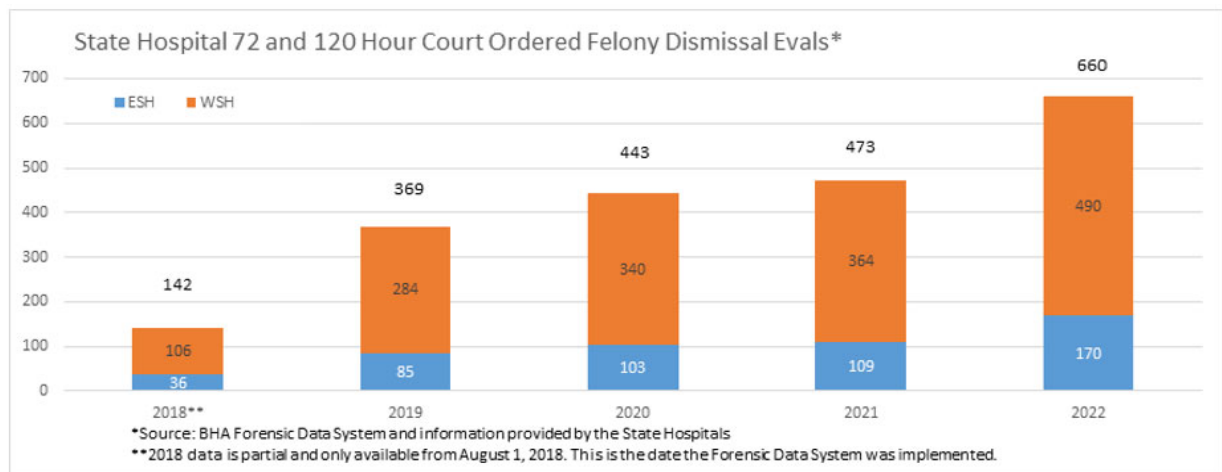
9 Similar to the commitment under the Agreement to open crisis triage facilities in
 10 Phase One and Two regions, the State has also funded ten additional crisis triage facilities to be
 11 built around Washington State, above and beyond the requirements and commitments of the
 12 Agreement. Kirschbaum Decl. at 4, Ex. D. The State has also embarked upon major investments
 13 in the mobile crisis and crisis response systems and housing support. *Id.* At 4, Ex E. While this
 14 demonstrates that large scale investment the State is making in adding treatment capacity to the
 15 behavioral health system, even this is not a complete description of the full scale of the
 16 investments being made by the State to address behavioral health, housing, and homelessness.
 17 *Id.* at 4; Kinlen Decl. at 4.

18 **D. Felony Conversion Civil Patients Are Class Members Who Become Conversion**
 19 **Cases Upon Dismissal of Their Criminal Charges**

20 “Felony conversions” or “felony flips” are persons whose felony criminal charges have
 21 been dismissed for reasons of incompetency, and where the criminal court then decides to “order
 22 the defendant to be committed to a state hospital . . . for the purpose of filing a civil commitment
 23 petition under chapter 71.05 RCW.” Wash. Rev. Code § 10.77.086(5). This statute mandates
 24 state hospitals to accept these patients, with no statutory discretion for alternate placements. *Id.*
 25 Only those patients facing a felony charge may be ordered to a state hospital. *Id.* Misdemeanors
 26 are instead directed to evaluation and detention within the local civil commitment systems in

each region. Wash. Rev. Code § 10.77.088(5). Any felony charge is eligible for such an order, and the Department receives patients who have very serious charges dismissed, such as murder, sexual violence perpetrated against children, sexual assaults, and serious physical violence. Bovenkamp Decl. at 3. Historically, the Department has also received less serious felonies through this process, such as malicious mischief and theft, for example. *Id.* The civil commitment hearing for these patients includes a factual question as to whether the individual “committed acts constituting a felony,” Wash. Rev. Code § 71.05.280(3), meaning that the underlying criminal conduct is an issue to be proven by admissible evidence at the civil commitment hearings.

For many of these cases, the criminal court enters the dismissal while the class member remains at the state hospital for restoration treatment, without the patient ever leaving the treatment bed they are in. It is not uncommon for a patient to start the day as a class member undergoing restoration treatment, but end the day as a civil conversion patient.



Bovenkamp Decl. at 3. The number of former class members who have been court-ordered into state hospitals as conversion cases has risen dramatically in the last several years. *Id.* This places even more demand on the state hospital system. *Id.* Unlike restoration cases, which have strict time limits on how long a patient can be committed to a state the hospital, conversion cases are subject to extended commitment under Wash. Rev. Code 71.05 until they can be safely

1 discharged to the community, and have a much higher average length of stay, often a year or
2 longer. *Id.*

3 **E. The Department Does Not Control Felony Conversions Court Orders, and Is**
4 **Mandated by Law and Court Order to Accept These Patients**

5 Felony conversion patients are directed specifically to the state hospitals
6 under current law, unlike other commitments who go into the custody of the Department.
7 Wash. Rev. Code § 10.77.086(5). With no discretion for the Department under this statute, the
8 Department has been explaining to criminal courts and parties the link between conversion
9 admissions and the deteriorating competency wait times, but court orders have only increased.
10 Bovenkamp Decl. at 3. To the extent that the state hospital has, when no other choice is possible,
11 attempted to decline felony conversion admissions and encourage diversion into other care
12 systems, the Department has received strong push back and has even been court-ordered to
13 continue to accept such patients. For example, following notice to system partners that not all
14 conversion cases could be admitted under current circumstances, Bovenkamp Decl. Ex. A,
15 notification was sent to King County regarding the Department's inability to admit a conversion
16 case resulting from a felony harassment charge, and encouraging referral to a local designated
17 crisis responder. *Id.* at 4-5, Exs. B-C. The Superior Court then entered an order directing the
18 Department to admit that conversion, and made findings that the court's orders "do not provide
19 authorization for DSHS and WSH to decline to admit." *Id.* at 4-5, Ex. D. The King County
20 Executive's Office then followed up with a letter demanding admission of that patient, and
21 others. *Id.* at 4-5, Ex. E. Because the Department had already filled those beds by other serious
22 cases, including a class member facing a Murder 1 charge, the Department was still unable admit.
23 *Id.* at 4-5, Ex. F. More litigation is expected. *Id.* at 4-5

24 **F. The Felony Conversion Challenge Raised by the Plaintiffs Is a Recent Development**

25 Ensuring that felony conversion patients are regularly transitioned to the civil side of the
26 hospitals has always been part of managing beds at the state hospitals. Bovenkamp Decl. at 5.

1 The hospitals have been largely successful in limiting the presence of these conversion patients
 2 in beds that could otherwise serve class members. *Id.* As Plaintiffs point out, as of
 3 December 2021, thirteen months ago, the number of felony conversion cases at WSH who were
 4 in forensic beds was as low as sixteen patients. Dkt. No. 938, at 7. This was the result of
 5 concerted efforts, including a policy change that increased transfers before a patient had their
 6 Wash. Rev. Code 71.05 civil commitment hearing. Bovenkamp Decl. at 5.

7 In spite of these efforts, this status quo began to change over the last ten to twelve months,
 8 with the number of conversion patients in forensic beds growing from sixteen patients to
 9 136 patients in September, and over 160 in December 2022. Dkt. No. 938, at 4 (Plaintiffs stating
 10 this patient population “has increased dramatically over the past year”). Several factors have
 11 combined over the last 10 months to create this issue, including the Omicron wave, the transition
 12 of long-term bed capacity into the community, and the dramatic rise in the number of conversion
 13 court orders.

14 The Omicron wave of COVID-19 dramatically impacted all Department treatment facilities,
 15 by creating long backlogs of patients awaiting admission, and slowing discharges.
 16 Bovenkamp Decl. at 5-7. During this same period the Department began preparing for the
 17 construction of the new forensic hospital on the WSH campus, which will provide 350 new
 18 forensic beds for class members. In order to build the new hospital it is necessary to demolish
 19 certain older buildings on campus to make room while also preserving other units like the
 20 recently renovated Fort Steilacoom Competency Restoration Treatment Center in Building 27⁴.
 21 *Id.* This demolition will result in the closure of approximately 180 long-term civil beds on the
 22 WSH campus, though these beds are replaced in the system by the almost 200 contracted
 23 long-term community civil beds already in place, and the 520 total that will be opened by 2025.
 24 Kirschbaum Decl. at 3. Because the of dramatic increase in felony conversion patients ordered

25
 26 ⁴ This is the Building 27 treatment space renovated using contempt fines, and currently providing
 restoration treatment to class members, preserving it is preferable to the antiquated space being demolished.

1 to the state hospitals by state superior courts, however, on top of the class member backlog
 2 created by Omicron, the Department was left with an increasing number of felony conversion
 3 cases in beds that it had intended to serve class members. Further, and because conversion cases
 4 occupy beds for much longer periods of time, this situation is leading to an increase in wait time
 5 for class members. This is not the outcome the Department planned or intended, and the
 6 Department is taking action to adjust its plans to account for this relatively recent flood of
 7 conversion demand.

8 **G. The State Is Securing Emergent Bed Capacity for Conversion Patients, and**
 9 **Triaging Admissions into Limited Beds**

10 As the number of felony conversion court orders climbed to over 670 orders in 2022, and
 11 the number of conversion patients in forensic beds grew from sixteen in December 2021 to over
 12 160 in December 2022, the Department has reacted by developing new plans to respond to the
 13 challenge. In addition to already existing plans for developing long-term civil treatment beds
 14 and facilities, the State is taking immediate action to create additional bed space on an emergent
 15 basis, rather than waiting for its longer term plans to be realized. Bovenkamp Decl. at 8-9.

16 First, the Department began identifying opportunities at WSH to increase civil treatment
 17 beds to mitigate the necessary closure resulting from demolition. *Id.* at 8. This resulted in the
 18 conversion of the treatment mall on C9 into a patient ward (a renovation project currently in
 19 progress), and the repurposing of small specialty units on C1 and C4 to normal treatment wards
 20 with a full patient census (completed in the fall of 2021). *Id.* These three projects combined, will
 21 result in fifty to sixty additional civil treatment beds. *Id.* The former civil commitment courtroom
 22 located within the WSH civil center, which cannot be used for housing patients, is being
 23 repurposed to make up for the treatment space lost as a result of the C9 conversion. *Id.*

24 Second, the Department and Health Care Authority (HCA) began engaging with
 25 community hospitals and treatment providers that could potentially serve the civil conversion
 26 population with existing beds. *Id.* They met with multiple hospitals across Washington State to

1 identity psychiatric treatment space that could receive transfers from state hospitals. *Id.* This
 2 effort included a direct appeal out to hospitals through the President and CEO of the Washington
 3 State Hospital Association. *Id.*, Ex. G. Through this effort, two projects were identified as viable
 4 options. *Id.* at 8-9. Combined, the two projects are estimated to provide up to fifty treatment
 5 beds. *Id.* These two projects are in established psychiatric hospitals that already provide care to
 6 patients, and the State has an agreement in principle with these two facilities. *Id.* Further, and in
 7 order to shorten timeframes associated with contracting and procurement law, the Department
 8 and HCA are partnering on this project, with HCA to leverage contracts already in place with
 9 these two hospitals. Kirschbaum Decl. at 5. The Department has finalized a transfer criteria and
 10 transfer process that can be used as soon as beds become available. Bovenkamp Decl. at 9. The
 11 Department and HCA are moving expeditiously to complete these projects. *Id.* Transferring up
 12 to fifty civil patients out of WSH will allow the Department to admit more class members for
 13 restoration and evaluation. *Id.*

14 Third, the Department has continued aggressive discharge planning efforts to ensure that
 15 civil patients are being discharged from the state hospital whenever that can be accomplished safely.
 16 In the 2017-2019 biennium, ending July 1, 2019, the Aging and Long Term Support
 17 Administration (ALTSA) assisted in transitioning 579 civil patients out of state hospitals into
 18 community settings. Declaration of Bea Rector (Rector Decl.) Ex. A. Since July 1, 2019, through
 19 August 31, 2021, an additional 632 patients were transitioned out of state hospitals. *Id.* An
 20 additional 340 patients were transitioned to other care settings in 2022. Rector Decl. at 1. Data
 21 kept by the Department shows how many civil conversion patients were among these transitions,
 22 and also shows additional discharges may not have involved ALTSA. Kinlen Decl. Ex. F.

23 However, the civil population of WSH has greatly changed in recent years. Seventy-five
 24 percent of the population is now made up entirely of felony conversion patients who were
 25 admitted from the criminal justice system, instead of civil patients arriving purely under
 26 Wash. Rev. Code 71.05 civil commitments. Bovenkamp Decl. at 10. While the State continues to

1 aggressively discharge civil patients, the discharges are now more complex than ever because of
 2 the level of acuity and criminal history of the civil patient population. *Id.* To the extent discharges
 3 could be done differently or more expeditiously, the State and Disability Rights Washington
 4 have entered into an agreement governing changes to the state hospital discharges. *Id.* Ex. H.

5 Fourth, the state hospitals have been reviewing patient acuity and room assignments to
 6 ensure that double rooms in the civil centers are utilized whenever possible. Bovenkamp Decl.
 7 at 9-10. Acutely ill or violent patients often must be roomed alone, sometimes in a room that
 8 could otherwise house two patients. *Id.* To co-house this population invokes risk of serious
 9 consequences—recently an NGRI is alleged to have murdered his roommate at the state hospital.
 10 *Id.* But, and with careful considerations towards patient safety and compatibility in mind, the
 11 Department is carefully evaluating more patients for fully using double rooms, to find further
 12 bed space, where safely possible. *Id.*

13 Fifth, wherever possible, the Department has delayed ward closures in order to lessen
 14 impacts and better match those closures up to the opening of the long-term civil capacity. *Id.*
 15 Those delays also bring the State closer to the opening of new projects on the Maple Lane
 16 campus, and other projects throughout the state. *Id.* To date, the Department has been able to
 17 delay two ward closures, providing more than three additional months of operation as a result.
 18 *Id.* A third closure is being delayed from March 2023 until June 2023.

19 Sixth, the Department developed a protocol for its Residential Treatment Facilities
 20 (RTFs) to periodically reassess patients for suitability for outpatient competency restoration
 21 treatment, for subsequent treatment orders. Bovenkamp Decl. at 9-10. Though no such transfers
 22 have yet to occur, this process has identified several suitable candidates for such transfer, each
 23 of whom improved to the level of being found competent before any such transfer could occur.
 24 *Id.* The Department is making adjustments to this process to identify more patients that could be
 25 eligible earlier in the restoration period, and making plans to expand this program to WSH. *Id.*

26 Finally, in order to identify every possible treatment option that could lead to

1 compliance and mitigate harm to class members, the Department has engaged with the
 2 South Correctional Entity facility (SCORE) on a possible project. This facility has flexibility for
 3 single, double and dorm style occupancy and, while it is a jail, the environment can be modified
 4 to provide for a more therapeutic environment. The Department has, so far, considered this as a
 5 place to create a triage and stabilization center, meaning that class members would have access
 6 to better services such as a prescriber and other clinical professionals. Patients could be better
 7 assessed as candidates for RTFs or OCRP, be better positioned for short and speedy restoration
 8 treatment at other facilities, and, most importantly, the Department could mitigate some of the
 9 harms that class members experience when they don't receive proper care in county and
 10 municipal jails. Plaintiffs, however, have told the Department they are strongly opposed to the
 11 use of this space for a class member program.

12 **H. The COVID-19 Omicron Wave Created a Large Backlog of Patients Waiting for**
 13 **Admission and Continues To Have Impacts Under the "New Normal"**

14 As previously reported to the Court, COVID-19 has complicated efforts to be responsive
 15 to the challenges associated with admitting class members. Dkt. No. 924-1, at 1; Dkt. No. 907-1,
 16 at 1-3; Dkt. No. 880-1, at 1-3; Dkt. No. 855-1, at 1-3. While the Department continues to
 17 implement Department of Health and CDC approved strategies that effectively mitigate
 18 infections and the spread of the disease within treatment facilities, the impacts of this disease are
 19 a "new normal" that did not exist prior to the pandemic. The number of defendants waiting for
 20 admission grew rapidly during the Omicron wave, and the Department has not yet been able to
 21 catch up.

22 Prior to Omicron, the Department was making positive progress on admission wait times.
 23 The summer of 2021 saw the number of class members waiting in jail drop to historical lows,
 24 with wait times improving and suspended fine amounts dropping to the lowest amounts in years.
 25 Dkt. Nos. 829, 833, 841. Unfortunately, the factors described above combined to create a new
 26

challenge in the State's efforts to lower wait times, but a challenge that the State is reacting to by appropriately adjusting its plans.

III. ARGUMENT

Plaintiffs' motion should be denied because the State has substantially complied with the Agreement, and is not in contempt beyond the contempt that was contemplated by the Agreement itself. Even though the ultimate goal is not yet achieved, the State has taken all reasonable steps to implement the Agreement and continued other efforts to achieve compliance. The Court should decline Plaintiffs' invitation to throw these efforts into chaos, and allow the State's plans to proceed.

A. The State Has Not Materially Breached the Agreement

1. The controlling language of the Agreement requires consideration of the State's efforts to successfully implement all aspects of the Agreement

Because of the "scope and breadth" of the Agreement, the Court and the Parties agreed that "a material breach of a particular element does not necessarily constitute material breach of the entire Agreement, unless otherwise specified." Dkt. No. 599-1, at 48. Any material breach analysis must not focus exclusively on any one part of the Agreement, but rather on the State's efforts towards the myriad requirements under the whole of the vast Agreement, including the hundreds of distinct actions and commitments contained within the Agreement and its related Implementation Plans.

The language of the Agreement controls the analysis of the State's compliance:

Given the scope and breadth of this Agreement, the Parties agree that a material breach of a particular element does not necessarily constitute material breach of the entire Agreement, unless otherwise specified herein. For purposes of this Agreement, and unless otherwise specified herein, "material breach" is defined as a failure to be in "substantial compliance" with the Agreement, and substantial compliance means something less than strict and literal compliance with every provision of this Agreement. Rather, deviations from the terms of the Agreement may occur, provided any such deviations are unintentional and minor, so as not to substantially defeat the object which the Parties intend to accomplish, or to impair the structure of the Agreement as a whole.

1 Dkt. No. 599-1, at 48-49. Plaintiffs cite to case law and the Restatement 2d of Contracts,
 2 Dkt. No. 938, at 9, 11, but because the language of the Agreement itself sets forth a standard,
 3 that standard should be applied. The Court does not need to resort to external case law or other
 4 resources in interpreting terms such as material breach and substantial compliance because they
 5 are terms defined in the Agreement. Dkt. No. 599-1, at 48.

6 **2. Plaintiffs' material breach argument confuses compliance with the**
 7 **Agreement with compliance with the injunction**

8 Non-compliance with the injunction for a longer period of time was contemplated by the
 9 Contempt Settlement Agreement, and cannot be a basis for a finding of breach of the same
 10 Agreement. While it is true the Agreement is intended to bring the State into compliance,
 11 Dkt. No. 599-1, at 3, Plaintiffs ask for a breach finding on this basis well before the initial phases
 12 of the Agreement have been completed. The Agreement contemplated at least three initial phases
 13 over six years, and the State is still implementing Phase Two, having just passed the half-way
 14 mark of the initial three phases. The Agreement also contemplates additional phases after the
 15 initial three, with the commitment essentially being indefinite in nature until compliance with
 16 the injunction is achieved. Dkt. No. 599-1, at 37 ("The Parties have agreed to at least three
 17 phases" and "This process shall continue until the termination of this Agreement."). Phase Three
 18 is also a critically important one because it includes modifications to the programs implemented
 19 in the first two phases in order to increase their effectiveness. Plaintiffs, having designed and
 20 agreed to a long-term Agreement process that focuses on a slower route towards ultimate
 21 compliance with the injunction, have prematurely alleged that the State has breached the
 22 Agreement based on the non-compliance with the injunction. This argument should be rejected.

23 **3. The State's efforts demonstrate that the State has achieved substantial**
 24 **compliance with Agreement, not a material breach**

25 The substantial compliance definition within the Agreement demonstrates that an
 26 argument directed toward the single requirement in § III(B)(4) must fail because the State's

1 efforts must be considered as a whole—especially in light of the fact that Plaintiffs concede the
 2 State did, in fact, construct and open the required beds between WSH and ESH. Dkt. No. 938,
 3 at 9. Because Plaintiffs cannot argue that the State violated the express terms of the Agreement,
 4 their theory of material breach argument instead resorts to the spirit and goals of the Agreement.
 5 In doing so, Plaintiffs focus exclusively on the current civil conversion population—a topic not
 6 contemplated at all by the Agreement—and exclude any discussion of the State’s numerous
 7 accomplishments which were actually required by the Agreement.

8 As required by the Agreement, the State developed implementation plans for each phase
 9 of the agreement. Each of these implementation plans were thoroughly negotiated with Plaintiffs,
 10 and then the Parties jointly submitted the plans to the Court Monitor and the Court as agreed
 11 plans. The State was then obligated under the terms of the Agreement to comply with each and
 12 every requirement of those plans, including the hundreds of “milestone tasks” that were set forth
 13 in the plans. Dkt. 599-1, at 46. The Final Implementation Plan for Phase One, Dkt. No. 679-1,
 14 set forth 137 discrete milestone tasks⁵ that the State was obliged to accomplish—and the State
 15 achieved all 137 tasks. Butcher Decl. at 2. The Final Implementation Plan for Phase Two of the
 16 Agreement, Dkt. No. 838-1, contains ninety-one milestone tasks⁶. Butcher Decl. at 2. While
 17 implementation of Phase Two is ongoing through June 30, 2023, to date, the State has completed
 18 seventy-three of the ninety-one milestone tasks. *Id.*

19 In sum, the State has accomplished 204 of the 208 tasks due to date, and it has done so
 20 during the course of a global pandemic, during a period of massive supply chain disruptions,
 21 during a nation-wide staffing crisis, and during a time of increasing costs. The State has
 22 performed these tasks because, like the Plaintiffs, it has a good faith belief that taking these steps
 23 will accomplish the goals of diverting future class members from the criminal justice system,
 24

25 ⁵ Three of the tasks were voided during Phase One taking the total number of tasks from 140 to 137.
 Butcher Decl. at 2.

26 ⁶ Two of the tasks have been voided during Phase Two taking the total number of tasks from ninety-three
 to ninety-one. Butcher Decl. at 2.

1 and by decreasing demand will help the State to provide constitutionally timely services to class
2 members.

3 **4. Even considering the language of § III(a)(4) in isolation, the Department is**
4 **meeting and exceeding its obligations under the Agreement not materially**
5 **breached that obligations**

6 The obligation at the core of Plaintiffs argument is this one:

7 a. The State will open additional forensic beds at Western State Hospital and
8 Eastern State Hospital, pursuant to existing funding authorized in the 2018
9 capital budget. The projected availability of additional forensic beds is as
10 follows:

11 (1) Develop two forensic wards at Eastern State Hospital by December
12 31, 2019 (25 beds each for total of 50 beds)

13 (2) Convert two Western State Hospital civil geriatric wards to two
14 forensic wards by December 31, 2019 (21 beds each for a total of 42
15 beds).

16 Dkt. No. 599-1, at 20. Plaintiffs argument in support of breach immediately resorts to the
17 “purpose” of the Agreement because Plaintiffs cannot demonstrate that the Department failed to
18 open the bed space contemplated under the Agreement. This obligation was completed in 2021,
19 and that completion was jointly reported to the Court. Dkt. No. 830-1, at 6.

20 The Department has actually gone further than what was required by the Agreement. The
21 Department sought and received funding to build two more forensic wards, from the ground up.
22 These two wards, F9 and F10, have been under construction for several years and will open on
23 the WSH campus in the coming months. Bovenkamp Decl. at 2. This additional bed capacity,
24 which the Department will use to admit class members for competency services, will provide an
25 additional fifty-eight beds in addition to the forty-two beds contemplated under the Agreement
26 in § III(a)(4).

Plaintiffs’ argument also presumes a requirement into the Agreement that is not present:
that specific beds be used for specific patients for some period of time. While the State agrees
with the goal of using these beds to provide services to class members—and is making plans to

1 adjust to the evolving circumstances that have made that difficult—the Court should consider
 2 whether there is a clear and express requirement under the Agreement that is being violated. The
 3 Parties knew how to implement such a clear restriction, as evidenced by the requirement that
 4 was included in the precursor agreement that led to the Building 27 project:

5 For three years following approval of this Agreement by the Court, the Department
 6 agrees to use the Building 27 space as intended in this Agreement, and during that
 7 time the Department shall seek leave of the Court if it wishes to use the Building 27
 space for a purpose other than that intended by the Agreement.

8 Dkt. No. 535-1, at 2. No such language or requirement was included in the Agreement. Plaintiffs’
 9 attempt to argue a material breach on language that is not even present in the Agreement should
 10 fail accordingly.

11 Finally, while Plaintiffs claim that treating civil conversion patients in forensic beds
 12 violates the goal and intent of the Agreement, this argument does not account for the reality that
 13 many class members, occupying a forensic bed, become a civil conversion patient without ever
 14 leaving the hospital. Even if the Department had unlimited bed space, it would always take *some*
 15 amount of time to transfer the former class member from the forensic ward into a civil ward.

16 **B. The State Should Not Be Held in Further Contempt When It Complied With the**
 17 **Terms of the Contempt Settlement Agreement**

18 **1. The State is in compliance with the terms of the Agreement and, therefore,**
the Court should find an additional finding of contempt is not ripe

19 Plaintiffs’ argument that the State should be found in contempt is confounding, when the
 20 essence of the Agreement is a plan for what the State is obligated to do *while the State remains*
 21 *in contempt of court*. Ongoing contempt of the Court’s orders was presumed for the life of the
 22 entire Agreement; once the State reaches compliance with the permanent injunction and would
 23 no longer be in contempt of that injunction, the terms of the Agreement itself terminates any
 24 further obligation. Dkt. No. 599-1, at 49-50. The Parties entered into the Agreement in 2018 and
 25 that agreement was approved by the Court. Dkt. No. 623, at 2. In doing so, the Court made it
 26 clear what the State was obligated to do while the previously found contempt findings remained

1 in place: perform all obligations under the Agreement. *Id.* The State has never disavowed,
 2 repudiated, or otherwise refused to carry out any aspect of the Agreement. Further, because
 3 Phase Two of the Agreement is not complete until the end of June 2023, any motion for contempt
 4 on the basis of the Phase Two obligations would not yet be ripe under the terms of § V(A)(1)(a)
 5 of the Agreement. Dkt. No 599-1, at 47-48. The Court should conclude additional contempt is
 6 unwarranted considering that the Contempt Settlement Agreement mapped out what was
 7 expected of the State in the context of ongoing contempt.

8 **2. The State has made all reasonable efforts by pursuing a systemic plan to**
 9 **address all populations and Plaintiffs fail to identify what other reasonable**
 10 **steps have not been taken, which means their argument should fail**

11 The State made reasonable plans that should have avoided the excessive presence of civil
 12 conversions in forensic beds, but a record number of referrals for both class members and
 13 conversion patients have frustrated this plan. The State is in the middle of a system-wide
 14 transformation of its behavioral health system. This plan includes moving long-term civil
 15 capacity off of the state hospital campuses, developing new types of community facilities, and
 16 opening new State facilities to treat specialized populations. The State has invested billions of
 17 dollars in this plan over a number of years, and the plans are still coming to fruition. Despite
 18 Plaintiffs arguments that the State created this crisis, Dkt. No. 938, at 21, the State's plans were
 19 designed to adequately provide capacity for various populations based on reasonable estimates
 20 of the size of those populations—until the record flood of demand grew to the point of outpacing
 21 the major initial investments across the entire system.

22 The construction preparations at WSH for the 350-bed forensic hospital will ultimately
 23 result in the closure of 180 long-term civil treatment beds this biennium. The State has funded
 24 the development of 520 long-term beds in the community, and almost 200 of those have already
 25 opened—more beds than will close on the WSH campus by the end of the biennium. To the
 26 extent that there are high-need populations that cannot be served in the types of beds that
 previously existed in the community, the State developed 111 beds at intensive behavioral health

1 facilities, and will also open long-term civil beds at state-run facilities like Oak Cottage at
 2 Maple Lane (sixteen beds) and the Clark County facility (forty-eight beds). The State has a plan
 3 to serve civil patients outside of the state hospitals, and it has already developed more long-term
 4 civil beds than will be closed this biennium—with hundreds more already coming. The State
 5 also continues major investments across other parts of the system to increase treatment capacity,
 6 and address issues of housing and homelessness. Dkt. No. 907-1, at 9-11 (June 2022 joint report
 7 detailing the State’s additional investment in Washington’s housing and homeless system of over
 8 \$520 million).

9 But despite this new community capacity, the Department continues to see record levels
 10 of demand sent to the state hospitals: including class members and as civil conversion patients.
 11 Referrals for inpatient competency services have not yet declined in these regions—contrary to
 12 the design of the Agreement and the hopes of the Parties. While the Agreement has begun to
 13 show nascent positive impacts in the Phase One regions, including fewer referrals for
 14 competency evaluations and better engagement in mental health services, demand for inpatient
 15 services as not declined as the Parties planned. Dkt. No. 942-2, at 17-20. When demand spirals
 16 upward in unanticipated ways, and despite major investments being made in commensurate civil
 17 capacity, the result is a system that is out of balance: too many civil conversion patients on
 18 forensic wards resulting in longer wait times for all patients ordered to state hospitals.

19 Again, and recognizing that the plans are being frustrated by increasing demand, the State
 20 is reacting swiftly to adjust its plans by contracting for up to fifty additional beds and transferring
 21 patients who cannot yet be discharged directly into the community, in order to augment existing
 22 plans for Intensive Behavioral Health Facilities, Maple Lane, and eventually, Clark County—in
 23 addition to the fifty-eight beds in F9 and F10, and the thirty-bed NGRI facility at Maple Lane.
 24 The State’s approach as it was designed years ago—and the adjustments currently being made
 25 to account for the spiraling increases in demand that occurred in 2022—represent reasonable
 26

1 steps towards compliance and a comprehensive approach to serving class members and all
2 patients ordered in the State's custody.

3 Plaintiffs' challenge to these plans is that more investments should be made in the
4 community. Dkt. No. 938, at 17. But, as detailed above, the State is already doing this by building
5 many more beds in the community than will close at the state hospitals, even if these investments
6 are not necessarily directly related to *Trueblood*. But even without this direct tie, the evidence
7 presented here shows that the State has been engaged in a multi-year concerted effort to build
8 other resources that are absolutely capable of benefitting class members, or potential
9 class members, by providing needed behavioral health care options for individuals well before
10 they deteriorate to the point of crisis and criminal justice involvement. The State is already doing
11 what Plaintiffs suggest; all of it and more.

12 Plaintiffs also argue that the State could have simply chose to not close civil wards at
13 the state hospital. But these closures will directly lead to a major investment of treatment space
14 for class members through construction of a 350-bed forensic hospital. Even though Disability
15 Rights Washington continues to oppose this project⁷, the State's investment in a new 350-bed
16 hospital to provide services to class members represents a major investment in the future with
17 the Court's injunction.

18 Ultimately, Plaintiffs offer no credible ideas for bettering wait times for competency
19 restoration services for class members that the State has refused to pursue. To the extent Plaintiffs
20 point to perceived gaps in the work the State plans to do in the upcoming legislative session, it
21 is premature to judge the outcome of a session that just began a few days ago on January 9, 2023.
22 Plaintiffs have been kept abreast of the States actions through regular meetings, opportunity to
23 comment, negotiation, and the like, and so it cannot be said credibly that the State's behavior
24 has not been in good faith. The State has acted reasonably to improve wait times for class

25
26 ⁷<https://www.disabilityrightswa.org/publications/612-million-new-forensic-hospital-unjustified-by-washingtons-own-analysis/>

1 members and improve the overall behavioral health system, even if a flood of demand has
 2 frustrated those plans, and is implementing plans to better serve class members and transform
 3 the entire system. These are not the actions of an entity who is seeking to breach the intent of the
 4 Settlement Agreement, as Plaintiffs claim.

5 **C. The Relief Requested by Plaintiffs Would Imperil the Agreement, and Create**
 6 **Unworkable Outcomes**

7 **1. The Department lived up to the fundamental deal to fund Agreement**
 8 **programs and implement them—it is fundamentally unworkable to require**
 9 **payment of contempt fines if the State is to continue funding and**
 10 **implementation of the Agreement and making investments in diverting class**
 11 **members**

12 It is unclear how the State could pay contempt fines, and continue funding its obligations
 13 under the Agreement that allowed for the State to avoid payment of those fines. If the suspended
 14 fines are reduced to judgment, or new contempt fines are imposed, the State should be released
 15 from all obligations of the Agreement. Each year, all state agencies compete for limited budget
 16 dollars, with only so much anticipated revenue available. The contempt fines proposed by
 17 Plaintiffs would represent significant sums that would otherwise be spent on investments in the
 18 Agreement, the behavioral health system, and building beds for class members. If the
 19 Department must request that Legislature allocate funding for the payment of fines, the finite
 20 amount of funding available necessarily means that funds to pay fines will be reallocated from
 21 other sources. If the contempt fine relief Plaintiffs request is granted, the future of the programs
 22 created by the Agreement is uncertain at best.

23 Underlying this concern is also a matter of fundamental fairness. The State entered into
 24 the Agreement, and committed to the Agreement's system improvement initiatives, in exchange
 25 for contempt funds to be held in abeyance. It is true that the State believes many of the
 26 Agreement's initiatives to be wise, and beneficial to class members, and potential class members,
 and the State will endeavor to continue these programs no matter the fines. But the State also
 made commitments in the Agreement to *not do* certain things. The State agreed to not treat

competency restoration patients at Yakima and at Maple Lane past certain dates, for example. The State agreed to forgo expansion at the Yakima facility. Accordingly, and were the Agreement to dissolve, the State submits it should regain some discretion to move forward with such initiatives. This includes: using space at SCORE to provide triage and treatment to class members as a means to pursue compliance with the injunction; exploring further in-reach to jails, and providing other behavioral health care treatment in those spaces; exploring the reopening of bed space at Yakima, and especially while bed space is so scarce; maintaining treatment of class members at Maple Lane; and other initiatives that the State has not pursued in favor of the plan laid out in the Agreement. If the State is to be compelled into compliance through severe contempt fines, the State should be free to pursue any lawful means to achieve compliance.

Finally, the requests for relief that Plaintiffs' request are not without consequences. If the State is pushed into transfers and discharges that are not adequately supported by services, the results will include risks to public safety, stresses on other systems, and poor patient outcomes that will lead patients back into the criminal justice system. Bovenkamp Decl. at 10-11; Kirschbaum Decl. at 5-6.

2. Given the Plaintiffs' apparent request to repudiate the Agreement, the State should be free to utilize available space to provide services to class members, and to develop jail-based restoration programs

If contempt fines are re-imposed, and the fundamental bargain of the Agreement is abandoned, the State should be free to pursue treatment in all lawful settings. This includes the use of jail based restoration programs. The State has thus far forgone the use of such programs in the past, instead agreeing to invest funds in other settings and the Agreement. But this is a viable and lawful approach that is being utilized in other states and approved by other Federal Courts.

All, or substantially all, states have seen a sharp increase in the need for competency restoration services. Kinlen Decl. at 6. Many states have either begun pilot projects or have implemented a jail based restoration program as one of an array of tools to combat this problem.

1 *Id.* These states use jail based restoration as one part of a continuum of care ranging from
 2 outpatient restoration in the community to traditional inpatient restoration at state operated
 3 hospitals. *Id.* Georgia is one example of a state using a jail based restoration unit to good effect
 4 and the ongoing results of the seven year project were recently published in the Journal of the
 5 American Academy of Psychiatry and the Law. Kinlen Decl. Ex. D. California created its own
 6 jail based competency restoration program because of the increasing referrals the state was
 7 experiencing.⁸ Texas began a pilot project in 2021 which restored thirty-three of fifty-six
 8 defendants to competency.⁹

9 Utah is one of the more recent additions to this group and the Federal District Court
 10 of Utah has directly approved of one such program as part of a case similar to *Trueblood*.
 11 *Disability Law Center v. State of Utah*, U.S.D.C. (D. Utah), Case No. 2:15-cv-00645-RJS.
 12 Jail based restoration is a lawful treatment option that, as a *policy choice*, is disfavored by
 13 Plaintiffs and the Court Monitor here in Washington. But if this litigation is to return to a posture
 14 where the State must pursue any and all options for capacity, then the State will want to develop
 15 all lawful options, including programs like Yakima and jail-based restoration—even if those
 16 policies are disfavored by those in this litigation. The Agreement, by limiting the treatment space
 17 that the State could use for class members, inevitably left the State in contempt for a longer
 18 period of time and accrued hundreds, if not millions, of dollars of additional fines. It is
 19 fundamentally unfair for the State to be punished for failing to achieve a successful outcome
 20 when the Agreement anticipated that it could take much longer to achieve compliance.

21 The Department should also be free to include the use of jail space to mitigate harm to
 22 class members. As part of the efforts to locate usable space for programs, the Department has
 23 been approached by multiple jail settings who have space to offer. Kinlen Decl. at 6-7. To date,
 24 the Department has not worked to develop jail-based restoration but it has pursued development

25 ⁸ <https://www.dsh.ca.gov/publications/docs/ADA2017AnnualRept.pdf>

26 ⁹ <https://www.hhs.texas.gov/sites/default/files/documents/jail-based-competency-restoration-pilot-program-2021.pdf>

1 of a possible triage and stabilization center at SCORE jail facility. Kinlen Decl. at 6-7. While
 2 wait times for admission to a state hospital remain high, a possible program at SCORE represents
 3 an opportunity to help class members, and also help to stabilize the overall system in a way that
 4 would benefit all class members. *Id.* Even if it is not the favorite policy choice of the Plaintiffs,
 5 if further findings of contempt are to be made, the Department must pursue these lawful options
 6 that provide services and mitigate harms to class members.

7 IV. CONCLUSION

8 The relief sought by Plaintiffs would imperil the State's ongoing work under the Agreement.
 9 Nor should the Court find either breach, or additional contempt, where the State has honored all of
 10 its obligations under the Agreement. Additionally, and despite Plaintiffs contentions, the State has
 11 a plan to address the recent rise in civil conversions. This plan should be allowed some time to unfold,
 12 and should include the leeway to engage with partners like SCORE, and to further explore options
 13 like in-jail restoration, at least until the rise in civil conversions can be abated. The Court should deny
 14 Plaintiffs motion accordingly, instead finding that the State met its obligations during Phase One,
 15 and affirming what the State believes – that the Agreement and its goals remain worthy of pursuit.

16 RESPECTFULLY SUBMITTED this 11th day of January 2023.

17 ROBERT W. FERGUSON
 18 Attorney General

19 *s/ Nicholas A. Williamson*

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CERTIFICATE OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 11th day of January 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davidc@dr-wa.org

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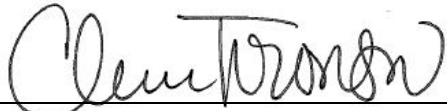
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 11th day of January 2023, at McCleary, Washington.



CHRISTINE TOWNSEND
Legal Assistant